IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 35192 of 2005(M)

PETITIONERS:

*** (1. RAGHAVAN, AGED 65,**
KALIKUNNEL, KARUVATTA NORTH MURI,KARUVATTA VILLAGE,
KARUVATTA P.O., ALAPPUZHA DIST.) - D E L E T E D

***1ST PETITIONER IS DELETED FROM THE ARRY OF PARTIES AS PER THE ORDER DTD. 26/03/2007 IN I.A.4659/07.**

2. BHARGAVAN,
THARAYIL, KARUVATTA P.O., KARUVATTA VILLAGE,
ALAPPUZHA DIST.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVT. SECRETARIAT, TRIVANDRUM.

2. THE SECRETARY,
KARUVATTA GRAMA PANCHAYAT, ALLEPPEY DISTRICT.

3. THE TAHSILDAR,
KARTHIKAPPALLY TALUK, ALLEPPEY DIST.

4. RAJAPPAN, S/O. KOCHUKUNJU,
METHRIKIZHAKETHIL, VADAKKUM MURIYIL,
KARUVATTA VILLAGE.

BY ADV. SRI.P.SREEKUMAR for R4
SRI.K.S.MANU (PUNUKKONNOOR)
SRI.S.SANAL KUMAR for R2
SMT.BHAVANA VELAYUDHAN
BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.35192/2005 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF REPRESENTATION DTD. 22/11/2005 SUBMITTED BEFORE THE 2ND RESPONDENT.

EXT.P2: COPY OF REPRESENTATION DTD. 9/08/2005 SUBMITTED BEFORE THE 3RD RESPONDENT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE REPORT DTD. 17/12/2005.

EXT.R2(B): COPY OF THE RESOLUTION NO.V(1) OF THE PANCHAYATH DTD. 17/12/2005.

4TH RESPONDENT'S EXHIBITS:

EXT.R4A: COPY OF THE TAX RECEIPT.

EXT.R4B: COPY OF THE ORDER OF INJUNCTION ORDER DTD. 27/10/2005 IN O.S.260/2005 OF THE MUNSIFF COURT.

EXT.R4C: COPY OF THE COMMISSION REPORT.

EXT.R4D: COPY OF THE PLAINT IN O.S.NO.271 OF 2005 OF THE MUNSIFF COURT HARIPAD IS PRODUCED HEREWITH AND MARKED.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO.35192 of 2005

Dated this the 16th day of October, 2007

JUDGMENT

The petitioners, residents of Ward No.X (new ward No.V) of Karuvatta Grama Panchayat in Alapuzha District claims that they and other people in the locality have been using a pathway lying on the western side of Chembuthodu which is a public pathway in the said ward from the time immemorial. The petitioners allege that while so the 4th respondent, a private party, unauthorizedly encroached into the said pathway and put up a fence in such a manner as to enclose the pathway with in their properties. The petitioners complain that though they and other people in the locality have submitted Exts.P1 and P2 representations before the 2nd respondent- Secretary of the Grama Panchayat and the 3rd respondent Tahsildar, no action have been taken by those respondents so far upon Exts. P1 and P2. The petitioners therefore pray in this writ petition under Article 226 of the constitution that;

i) a writ of mandamus be issued directing the 2nd respondent to take immediate and effective steps for removal of the unauthorised encroachments by the 4th respondent on the pathway.

ii) Issue a writ of mandamus directing the 3rd respondent to take

immediate steps for removal of the encroachment by the 4th respondent on the public pathway.

iii). Directing the respondents 2 and 3 to consider and dispose of exts.P1 and P2 in accordance with law.

2. The 2nd respondent has filed a detailed counter affidavit. It is stated therein that the Panchayat received Ext.P1 dated 22.11.2005. Considering Ext.P1, the Panchayat held its meeting on 26.11.2005 and passed resolution No. VII(5) deputing the concerned Ward Member to enquire into the question and report the matter. The 2nd respondent received the report of the concerned Panchayat member. Ext.R2(a) is a copy of that report. Ext.R2(a) is to the effect that only by measurement the question whether the pathway is or is not puramboke can be ascertained. Accordingly, the Panchayat passed Ext.R2(b) resolution requesting the Tahsildar to measure the property of the alleged encroacher and find out whether the property is a puramboke property. Accordingly, measurement was conducted and the alleged encroachment was removed after measurement.

3. The 4th respondent has filed a counter affidavit. He claims that he is in possession of 1.21 Ares of land in Survey No.29/26-B in Karuvatta Village. Ext.R4A is a copy of the tax receipt. The above property was purchased as per the sale deed dated 21.7.2003 and

thereafter no alterations have been made to the boundary and there is no encroachment into the pathway as alleged. It is claimed that the revenue authorities have not demarcated any puramboke land in the area and the revenue records including the sketch of the area do not refer to any land. The 4th respondent was not objecting to the people crossing his property so as to reach the neighbouring properties. But this does not create any right for the petitioners or the public to claim a pathway through the 4th respondent's pathway as a matter of right. It is then contended that a person who is residing behind the 4th respondent's property has been making demands to the respondent to sell him the property so as to make a wider road to his residence. The 4th respondent declined the request and since then he has been making attempts to create troubles. When he made attempts to trespass into the property of the 4th respondent and cut open a wider road, the 4th respondent respondent was constrained to initiate a civil suit and obtained Ext.R4B injunction order. Ext.R4C is the Commission report filed in that case which would show that the width of the pathway is less than 1.5. meters. Ext.R4C also reports that there are coconut trees aged 25 years standing on the pathway. The neighbouring land owner filed civil suits against the respondent (O.S. No.271/2005) seeking a decree of mandatory injunction to remove the

alleged encroachment. Ext.R4D is a copy of the plaint in O.S.No.271/2005. Apart from that, the respondent has filed O.S.No.268/2006 for declaration of title and that suit is also pending. It is then pointed out that the 3rd respondent who is the authority competent to find out the encroachment and to act in terms of the Land Conservancy Act has not issued any notice to the 4th respondent so far. But certain retired revenue officials are making attempts to create troubles to the 4th respondent so as to help the neighbouring land owner who is behind all the litigations initiated against the respondent. There was an attempt to destroy the 4th respondent's cultivation and the police was informed about the same.

4. A reply affidavit has been filed by the petitioner reiterating his contention.

5. I have heard the submission of Sri. S.Sreekumar, the learned counsel for the petitioners, Sri.P.Sreekumar, the learned counsel for the 4th respondent and Sri.K.J.Muhammed Anzar the learned Government Pleader. It is seen that essentially the dispute involved in this writ petition is a civil dispute, which is to be adjudicated and settled by a competent Civil Court. As a mater of fact three suits are already pending before the Harippad Munisff's Court. Considering the pendency of those suits and the contentions which are seen pursued

by the parties, the writ petition will stand disposed of issuing the following orders:

The Munsiff Court Harippad, where O.S. Nos.271/2005, 260/2005 and 268/2006 are pending, shall consolidate all those suits. The writ petitioners are permitted to seek his impleadment in any one of those suits. If impleadment application is filed, the learned Munsiff will consider that application favourably with notice to the opposite side. Once the petitioners get themselves impleaed in the suit they can request the learned Munsiff to have a fresh measurement of the properties in question for determining whether any puramboke is in possession of the 4th respondent as alleged. If it is seen that measurement is necessary, the learned Munsiff will appoint an Advocate Commissioner upon application filing in that regard by the petitioners and facilitate the measurement. Once the Commission report is available, the learned Musniff will give top priority to the three suits and dispose of them at his earliest and at any rate within two months of the Advocate Commissioner 's report being made available.

PIUS C. KURIAKOSE,
JUDGE.

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